

# News Release



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## **Labor Department Files Suit To Restore Delinquent Contributions to Monroe, Michigan, 401(k) Plan**

**DETROIT, Mich. --** The U.S. Department of Labor has filed suit to restore unremitted contributions made to a 401(k) plan by employees of a Monroe, Mich., firm. The suit, filed against Fox Berry Inc., as successor to Foxberry Group Inc., Thomas L. Fox, president of both companies, and the Foxberry Group Inc.'s 401(k) plan alleges that Fox and Fox Berry, Inc. failed to forward employee contributions to the company's pension plan; failed to segregate the plan contributions from the company's general operating assets; and placed vested account balances of 11 former employees into a forfeiture account.

"The department will act when plan fiduciaries fail to carry out their duty to protect the retirement plan assets held on behalf of participants," said Joseph Menez, director of the department's Cincinnati regional office of the Employee Benefits Security Administration (EBSA).

The lawsuit alleges that Fox failed to remit employee contributions to the 401(k) plan from January 2000 through December 2002. The suit further alleges that Fox transferred assets from one custodian of the plan to another in 2000. The vested account balances of former employees were held in a forfeiture account. In 2003, the suit charges, Fox instructed the plan custodian to liquidate the plan, convert the forfeiture account to cash and remit the cash to Foxberry Group. The funds were then transferred to Fox Berry and used for general operating expenses in violation of the Employee Retirement Income Security Act.

The suit seeks to require Fox and the company to restore to the plan all contributions plus interest, remove Fox as a plan fiduciary, and correct any prohibited transactions. The Labor Department also asks that the court appoint an independent fiduciary to oversee the plan.

The suit, filed in federal district court in Michigan, resulted from an investigation conducted by the Detroit district office of EBSA's Cincinnati regional office. Employers and workers can reach the Cincinnati regional office at (859) 578-4680 or through EBSA's toll-free number, 1-866-444-EBSA (3272) for help with problems relating to private-sector retirement and health plans. In fiscal year 2004, EBSA achieved record monetary results of \$3.1 billion related to the pension, 401(k), health and other benefits of millions of American workers and their families.

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(Chao v. Fox Berry, Inc.)  
Civil Action No. 05-70926

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